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10           **UNITED STATES DISTRICT COURT**

11           **DISTRICT OF NEVADA**

12           ESTATE OF TASHI S. FARMER a/k/a TASHII  
13           FARMER a/k/a TASHII BROWN, by and  
14           through its Special Administrator, Elia Del  
15           Carmen Solano-Patricio; TAMARA BAYLEE  
16           KUUMEALI' MAKAMAE FARMER DUARTE,  
17           a minor, individually and as Successor-in-  
18           Interest, by and through her legal guardian,  
19           Stevandra Lk Kuanoni; ELIAS BAY  
20           KAIMIPONO DUARTE, a minor, individually  
21           and as Successor-in-Interest, by and through his  
22           legal guardian, Stevandra Lk Kuanoni,

23           Case No.: 2:17-cv-01946-JCM-PAL

24           Plaintiffs,

25           vs.

26           LAS VEGAS METROPOLITAN POLICE  
27           DEPARTMENT, a political subdivision of the  
28           State of Nevada; OFFICER KENNETH  
29           LOPERA, individually and in his Official  
30           Capacity; and Does I through 50 inclusive,

31           Defendants.

32           **PROTECTIVE ORDER**

33           Plaintiffs seeks to obtain, inspect and copy documents and/or things which the Las Vegas  
34           Metropolitan Police Department ("LVMPD") contends contains private and sensitive  
35           information, confidential information of LVMPD, its officers and employees, its internal  
36           investigative and administrative actions, and other confidential information. Pursuant to an  
37           agreement by the Parties, the Court hereby enters the following Order for Protection ("Protective  
38           Order"):

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## TERMS OF PROTECTIVE ORDER

### I. DEFINITIONS

The following definitions apply to the Protective Order:

1. Party. Any party to this action, including all of its officers, directors, employees, consultants, Experts, and Outside Counsel. Party, as used in this Protective Order, shall also refer to the Las Vegas Metropolitan Police Department, and its officers, agents and employees.

2. Disclosure or Discovery Material. All items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

3. “Confidential” Information or Items. Information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under the law enforcement investigative and/or official information privileges, or that contain Criminal History Information, personal information regarding individuals including Social Security Numbers, dates of birth and information which a person would have a reasonable expectation of privacy. Confidential information shall also include information concerning, regarding, or as a result of covert or undercover law enforcement investigation(s) technique(s), method(s) or source(s), including the identity of any confidential informant, undercover officer information, or information referring to any undercover or active criminal investigations. Further, Confidential information shall also include any information protected from disclosure under *Donrey v. Bradshaw*, 106 Nev. 630 (1990) or an official or executive information privilege. Confidential information shall also include employee information, employee medical information, and employee disciplinary action, including any internal investigation concerning employee actions.

4. Receiving Party. A Party that receives Disclosure or Discovery Material or Confidential Information from a Producing Party.

5. Producing Party. A Party or third-party that produces Disclosure or Discovery Material or Confidential Information in this action.

1       6.     Designating Party. A Party or third-party that designates information or items  
2 that it produces in disclosures or in responses to discovery as "Confidential."

3       7.     Protected Material. Any Disclosure or Discovery Material or Confidential  
4 Information that is designated as "Confidential."

5       8.     Outside Counsel. Attorneys who are not employees of a Party but who are  
6 retained to represent or advise a Party in this action.

7       9.     House Counsel. Attorneys who are employees of a Party.

8       10.    Counsel (without qualifier). Outside Counsel and House Counsel (as well as their  
9 support staffs).

10      11.    Expert. A person with specialized knowledge or experience in a matter pertinent  
11 to the litigation retained by a Party or its Counsel to serve as an expert witness or as a consultant  
12 in this action. This definition includes, but is not limited to, a professional jury or trial consultant  
13 retained in connection with this litigation.

14      12.    Professional Vendor. Person or entity that provides litigation support services  
15 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing,  
16 storing, retrieving data in any form or medium; etc.) and its employees and subcontractors.

17      13.    The use of the singular form of any word includes the plural, and vice versa.

18      **II. SCOPE**

19      The protection conferred by this Protective Order covers not only Protected Material, but  
20 also any information copied or extracted therefrom, as well as all copies excerpts, summaries, or  
21 compilations thereof, testimony, conversations, or presentations by parties or counsel to or in  
22 court or in other settings that might reveal Protected Material.

23      **III. DURATION**

24      Even after the termination of this action, the confidentiality obligations imposed by this  
25 Protective Order shall remain in effect until a Designating Party agrees otherwise in writing or a  
26 court order otherwise directs.

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1       **IV. DESIGNATING PROTECTED MATERIAL**

2           1.       Manner and Timing of Designations. Except as otherwise provided herein, or as  
3 otherwise ordered, material that qualifies for protection under this Order must be clearly  
4 designated before it is disclosed or produced. Designations in conformity with this Order  
5 require:

6           a.       For information in documentary form. That the Producing Party  
7 shall affix the legend “Confidential” on each page that contains Protected Material. If only a  
8 portion or portions of the material on a page qualifies for protection, the Producing Party also  
9 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
10 margins or redacting protected portions). A Producing Party that makes original documents or  
11 materials available for inspection need not designate them for protection until after the inspecting  
12 Party has indicated which material it would like copied and produced. During the inspection and  
13 before the designation, all of the material made available for inspection shall be deemed  
14 “Confidential.” After the inspecting Party has identified the documents it wants copied and  
15 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
16 protection under this Order, and, before producing the specified documents, the Producing Party  
17 must affix the appropriate legend on each page that contains Protected Material. If only a  
18 portion or portions of the material on a page qualifies for protection, the Producing Party also  
19 must clearly identify the protected portion(s) (e.g., by making appropriated markings in the  
20 margins or by redacting protected portions).

21           b.       For testimony given in deposition or in other pretrial or trial  
22 proceedings. That before the close of the deposition, hearing, or other proceeding, the Party or  
23 non-party offering or sponsoring the testimony shall identify on the record all protected  
24 testimony and further specify any portions of the testimony that qualify as “Confidential.” When  
25 it is impractical to identify separately each portion of testimony that is entitled to protection, the  
26 Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before  
27 the deposition or proceeding is concluded) a right to have up to thirty (30) days to identify the  
28 specific portions of the testimony as to which protection is sought. Only those portions of the

1 testimony that are appropriately designated for protection under the standards set forth herein  
2 within the thirty (30) days shall be covered by the provisions of this Protective Order. Upon  
3 request of a Designating Party, transcript pages containing Protected Material must be separately  
4 bound by the court reporter, who must affix to the top of each such page the legend  
5 "Confidential" as instructed by the Party or non-party offering or sponsoring the witness or  
6 presenting the testimony.

7                   c. For information produced in some form other than documentary,  
8 and for any other tangible items. That the Producing Party affix in a prominent place on the  
9 exterior of the container or containers in which the information or item is stored the legend  
10 "Confidential." If only portions of the information or item warrant protection, the Producing  
11 Party, to the extent practicable, shall identify the protected portions.

12                 2. Inadvertent Failure to Designate. Inadvertent failure to identify documents or  
13 things as "Confidential" pursuant to this Protective Order shall not constitute a waiver of any  
14 otherwise valid claim for protection, provided that the provisions of this paragraph are satisfied.  
15 If the Designating Party discovers that information should have been but was not designated  
16 "Confidential" or if the Designating Party receives notice that would enable the Designating  
17 Party to learn that it has disclosed such information, the Designating Party must immediately  
18 notify all other parties. In such event, within thirty (30) days of notifying all other Parties, the  
19 Designating Party must also provide copies of the "Confidential" information designated in  
20 accordance with this Protective Order. After receipt of such re-designated information, the  
21 "Confidential" information shall be treated as required by this Protective Order, and the  
22 Receiving Party shall promptly, but in no event more than fourteen (14) calendar days from the  
23 receipt of the re-designated information, return to the Designating Party all previously produced  
24 copies of the same unlegended documents or things. The Designating Party and the Parties may  
25 agree to alternative means. The Receiving Party shall receive no liability, under this Protective  
26 Order or otherwise, for any disclosure of information contained in unlegended documents or  
27 things occurring before the Receiving Party was placed on notice of the Designating Party's  
28 claims of confidentiality.

1       **V.     CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2           1.     Meet and Confer. A Party that elects to initiate a challenge to a Designating  
 3 Party's confidentiality designation must do so in good faith and must begin the process by  
 4 conferring with counsel for the Designating Party. The challenging Party must give the  
 5 Designating Party an opportunity of not less than ten (10) calendar days to review the designated  
 6 material, to reconsider the circumstances, and, if no change in the designations is offered, to  
 7 explain in writing the basis for the confidentiality designation.

8           2.     Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
 9 designation after considering the justification offered by the Designating Party may file and  
 10 serve a motion that identifies the challenged material and sets forth in detail the basis for the  
 11 challenge. Until the Court rules on the challenge, all parties shall continue to afford the material  
 12 in question the level of protection to which it is entitled under the Producing Party's designation.

13       **VI.    ACCESS TO AND USE OF PROTECTED MATERIAL**

14           1.     Basic Principles. A Receiving Party may use Protected Material that is disclosed  
 15 or produced by another Party or by a third-party in connection with this case solely for the  
 16 limited purposes of prosecuting, defending, attempting to settle, or settling this action. Such  
 17 Protected Material may be disclosed only to the categories of persons and under the conditions  
 18 described in the Protective Order. Protected Material must be stored and maintained by a  
 19 Receiving Party at a location and in a secure manner that ensures that access is limited to the  
 20 persons authorized under this Protective Order.

21           2.     Disclosure of "Confidential" Information or Items. Unless otherwise ordered by  
 22 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
 23 information or item designated Confidential only to:

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1                           a.         The Parties to this action and the Receiving Party's Outside  
2 Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably  
3 necessary to disclose the information for this litigation. Counsel of Record shall be responsible  
4 for advising all of their staff of the existence of, and their confidentiality obligations under, the  
5 Protective Order, and shall be responsible for any non-compliance with the Protective Order by  
6 members of their staff that have not signed an agreement to be bound by the Protective Order;

7                           b.         The officers, directors, and employees of the Receiving Party to  
8 whom disclosure is reasonably necessary for this litigation and who have signed or have agreed  
9 under oath and on the record to be bound by the "Agreement to Be Bound by Protective Order"  
10 (Exhibit A);

11                          c.         Experts of the Receiving Party to whom disclosure is reasonably  
12 necessary for this litigation and who have signed or have agreed under oath and on the record to  
13 be bound by the "Agreement to Be Bound by Protective Order" (Exhibit A);

14                          d.         The Court and its personnel;

15                          e.         Court reporters, their staffs, and Professional Vendors to whom  
16 disclosure is reasonably necessary for this litigation;

17                          f.         During their depositions or at trial, witnesses in the action to whom  
18 disclosure is reasonably necessary. Witnesses will not be permitted to retain copies of Protected  
19 Material unless they have signed or agreed under oath and on the record to be bound by the  
20 "Agreement to Be Bound by Protective Order" (Exhibit A). Upon request of a Designating  
21 Party, pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
22 Material must be separately bound by the court reporter and may not be disclosed to anyone  
23 except as permitted under this Protective Order; and

24                          g.         The author of the document or the original source of the  
25 information and recipients or addressees in the normal course of business.

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1           Notwithstanding the preceding of this paragraph VI(2), a Party that has produced its, his  
 2 or her own Protected Material may disclose such Protected Material to any persons, with or  
 3 without any conditions placed upon such disclosure, as the Party deems appropriate.

4           3.     Trial and Dispositive Motion Disclosure: For the purpose of trial and/or  
 5 dispositive motions, the parties acknowledge that a “strong presumption in favor of access”  
 6 exists. A party seeking to seal a judicial record at trial and/or the dispositive motions stage bears  
 7 the burden of establishing “compelling reasons” by “articulating compelling reasons supported  
 8 by specific factual findings,” that outweigh the public policies favoring disclosure.<sup>1</sup>

9           4.     Disclosure of Possession of Confidential Information. All persons described in  
 10 paragraph VI above shall not under any circumstances sell, offer for sale, advertise, or publicize  
 11 either the Confidential Information or the fact that such persons have obtained Confidential  
 12 Information.

13 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
 14 OTHER LITIGATION**

15           If a Receiving Party is served with a subpoena or an order issued in other litigation that  
 16 would compel disclosure of any information or items designated in this action as “Confidential”  
 17 the Receiving Party must so notify the Designating Party, in writing (by fax or email if possible)  
 18 immediately and in no event more than seven (7) calendar days after receiving the subpoena or  
 19 order. Such notification must include a copy of the subpoena or court order. The Receiving  
 20 Party also must within ten (10) calendar days inform in writing the party who caused the  
 21 subpoena or order to issue in the other litigation that some or all the material covered by the  
 22 subpoena or order is the subject of this Protective Order and deliver to such party a copy of this  
 23 Protective Order. The Designating Party shall bear the burdens and the expenses of seeking  
 24 protection in that court of its Confidential material – and nothing in these provisions should be  
 25 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful  
 26 directive from another court. Once notice is given, and five business days have elapsed, the  
 27 receiving party shall have no further liability for disclosure pursuant to a subpoena or its

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28 <sup>1</sup> See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9<sup>th</sup> Cir. 2006).

1 equivalent.

2 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
4 Material to any person or in any circumstance not authorized under this Protective Order, the  
5 Receiving Party must immediately and within not more than seven (7) calendar days: (a) notify  
6 in writing (using best efforts to use email or fax) the Designating Party of the unauthorized  
7 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the  
8 person or persons to whom unauthorized disclosures were made of all the terms of the Protective  
9 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement  
10 to Be Bound" (Exhibit A). The Receiving Party shall promptly notify the Designating Party of  
11 the results of its efforts with regards to (b), (c), and (d) herein. After a good faith meet and  
12 confer effort to resolve and remaining disputes concerning compliance with this paragraph, and  
13 Party, Receiving Party or Designating Party may seek relief from this Court for non-compliance  
14 with this provision. Said relief may include, but is not limited to, preclusion of the Receiving  
15 Party's use in this litigation of the Protected Material that was disclosed contrary to this  
16 Protective Order, or any other sanction deemed appropriate by the Court.

17 **IX. PUBLICLY AVAILABLE OR PREVIOUSLY POSSESSED INFORMATION**

18 The restrictions in the preceding paragraphs regarding disclosure or Protected Material do  
19 not and shall not apply to information or material that: was, is, or becomes public knowledge in a  
20 manner other than by violation of the Protective Order, is acquired by the non-designating party  
21 from a third-party having the right to disclose such information or material; or was lawfully  
22 possessed by the non-designating party before the date of this Protective Order. The Designating  
23 Party shall act in good faith to notify the Receiving Party of any change in circumstances that  
24 renders Confidential Information or Items no longer Confidential within a reasonable time period  
25 after the change becomes known to the Designating Party.

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1       **X. FILING PROTECTED MATERIAL**

2              The parties acknowledge that there is a presumption of public access to judicial files and  
 3 records. Therefore, a party seeking to file a confidential document under seal must file a motion  
 4 to seal and must comply with the Ninth Circuit's directives in *Kamakana v. City and County of*  
 5 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006). Because this Court has adopted electronic filing  
 6 procedures, attorneys must file documents under seal using the court's electronic filing  
 7 procedures. *See Local Rule IA 10-5.* Papers filed with the court under seal must be  
 8 accompanied with a concurrently-filed motion for leave to file those documents under seal. *See*  
 9 *Local Rule IA 10-5(a).*

10             The parties bear the burden of showing that a specific document or documents are secret  
 11 or confidential. Parties seeking to maintain the secrecy of documents attached to dispositive  
 12 motions must show compelling reasons sufficient to overcome the presumption of public access.  
 13 *Kamakana*, at 1180. All motions to seal must address the applicable standard and explain why  
 14 that standard has been met. The fact that a court has entered a blanket stipulated protective order  
 15 and that a party has designated a document as confidential pursuant to the protective order does  
 16 not, standing alone, establish sufficient grounds to seal a filed document. *See Foltz v. State*  
 17 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003).

18             If the grounds for a motion to seal is that the opposing party (or non-party) has designated  
 19 a document as subject to a protection pursuant to the stipulated protective order, the movant must  
 20 notify the opposing party (or non-party) at least seven days prior to the filing of the designated  
 21 document. The designating party must then make a good faith determination if the relevant  
 22 standard for sealing is met. To the extent the designating party does not believe the relevant  
 23 standard for sealing can be met, it shall indicate that the document may be filed publicly no later  
 24 than four days after receiving notice of the intended filing. To the extent that the designating  
 25 party believes that relevant standard for sealing can be met, it shall provide a declaration  
 26 supporting that assertion no later than four days after receiving notice of the intended filing. The  
 27 filing party shall then attach that declaration to its motion to seal the designated material. If the  
 28 designating party fails to provide such a declaration in support of the motion to seal, the filing

1 party shall file a motion to seal so indicating that the court may order the document filed in the  
 2 public record.

3 In the subject case, the parties acknowledge that many of the documents that the parties  
 4 may designate as "confidential" would normally not meet the standards. However, because there  
 5 is a parallel criminal proceeding involving Defendant Lopera, the parties, in an abundance of  
 6 caution, intend to designate certain evidence relevant to the criminal proceedings as  
 7 "confidential" until the criminal proceedings are complete or the subject documents are made  
 8 public.

9 **XI. FINAL DISPOSITION**

10 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)  
 11 calendar days of a written request, after the final termination of this action, each Receiving Party  
 12 must return all Protected Material to the Producing Party. As used in this subdivision, "all  
 13 Protected Material" includes all copies, abstracts, compilations, summaries or any other form of  
 14 reproducing or capturing any of the Protected Material. With permission in writing from the  
 15 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead  
 16 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party  
 17 must submit a written certification to the Producing Party (and, if not the same person or entity,  
 18 to the Designating Party) by the thirty (30) calendar day deadline that identifies (by category,  
 19 where appropriate) all the Protected Material that was returned or destroyed and that affirms that  
 20 the Receiving Party has not retained any copies, abstracts, compilations, summaries or other  
 21 forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
 22 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal  
 23 memoranda, correspondence or attorney work product, even if such materials contain Protected  
 24 Material. Any such archival copies that contain or constitute Protected Material remain subject  
 25 to this Protective Order as set forth herein. In the event of an appeal, "Final Disposition" shall  
 26 not occur until the conclusion of all appeals.

1           **XII. ADDITIONAL PROVISIONS**

2           1.       Modification.   The Parties may modify this Protective Order by written  
3 agreement, subject to approval by the Court. The Court may modify this Protective Order.

4           2.       Right to Assert Other Objections. This Protective Order does not affect or waive  
5 any right that any Party otherwise would have to object to disclosing or producing any  
6 information or item on any ground not addressed in this Protective Order. Similarly, this  
7 Protective Order does not affect or waive any Party's right to object on any ground to use in  
8 evidence any of the material covered by this Protective Order.

9           3.       Privileges Not Waived. This Protective Order does not affect or waive any  
10 applicable privilege or work product protection, or affect the ability of a Producing Party to seek  
11 relief for an inadvertent disclosure of material protected by privilege or work product protection.

12          4.       Third Party Protections. Any witness or other person, firm, or entity from which  
13 discovery is sought may be informed of and may obtain the protection of this Protective Order by  
14 written notice to the Parties' respective counsel or by oral notice at the time of any deposition or  
15 similar proceeding.

16          5.       Obligations to Third Parties. Nothing herein shall operate to relieve any Party or  
17 non-party from any pre-existing confidentiality obligations currently owed by any Party or non-  
18 party to any other Party or non-party.

19          6.       Retention of Completed "Acknowledgment and Agreement to Be Bound" Forms  
20 (Exhibit A). Completed "Acknowledgement and Agreement to Be Bound" Forms (Exhibit A)  
21 ("form") shall be maintained by the Party that obtained the completed form pursuant to this  
22 Protective Order. The Party retaining the completed form shall produce the form to resolve any  
23 good faith challenge by a Party or Designating Party or dispute concerning whether a person who  
24 is obligated under this Protective Order to complete the form did so properly and complied with

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1 the representations in the form and this Protective Order. If the parties are unable to resolve any  
2 such disputes or challenges through a good faith meet and confer process, the challenging Party  
3 or Designating Party may seek appropriate relief from this Court.

4 IT IS SO STIPULATED this 18th day of January, 2018.  
5

6 MARQUIS AURBACH COFFING

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Daniel R. McNutt, Esq.  
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Las Vegas, Nevada 89101  
Attorney for Defendant Lopera

18 IT IS SO ORDERED THIS 23 day of January, 2018.

21   
United States Magistrate Judge

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**EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_, have read in its entirety and understand the Protective Order that was  
4 issued by the United States District Court, for the District of Nevada on \_\_\_\_\_, 2018,  
5 in the case of *Estate of Tashi S. Farmer a/k/a Tashii Farmer a/k/a Tashii Brown, by and through*  
6 *its Special Administrator, Elia Del Carmen Solano-Patricio, et al. v. LVMPD, et al.*, Case No.  
7 2:17-cv-01946-JCM (PAL). I agree to comply with and to be bound by all terms of this  
8 Protective Order and I understand and acknowledge that failure to so comply could expose me to  
9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose  
10 in any manner any information or item that is subject to this Protective Order that any person  
11 entity except in strict compliance with the provisions of this Order. Further, I solemnly promise  
12 that I will not offer to sell, advertise or publicize that I have obtained any Protected Material  
13 subject to this Protective Order.

14 At the conclusion of this matter, I will return all Protected Material which came into my  
15 possession to counsel for the party from whom I received the Protected Material, or I will  
16 destroy those materials. I understand that any Confidential Information contained within any  
17 summaries of Protected Material shall remain protected pursuant to the terms of this Order.

18 I further agree to submit to the jurisdiction of the United States District Court, for the  
19 District of Nevada for the purpose of enforcing the terms of this Protective Order, even if such  
20 enforcement proceedings occur after termination of this action.

21 I certify under the penalty of perjury that the foregoing is true and correct.

22 Date: \_\_\_\_\_

23 City and State where signed: \_\_\_\_\_

24 Printed name: \_\_\_\_\_

25 Address: \_\_\_\_\_

26 Signature: \_\_\_\_\_

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